

## **THE CODE OF ETHICS VERSUS LICENSE LAW**

### **How They Are Similar, and How They Are Different**

By Lee B. Harris. General Counsel

All licensees are bound by the license laws found in KRS Chapter 324 and 201 KAR Title 11. Licensees who are also members of a Board of Realtors® are subject to the license law and the Code of Ethics. These two sets of rules are very similar in most respects. Both sets of rules are designed to provide guidelines for agents and brokers about how to fairly and smoothly represent buyers and sellers of real estate.

There are certain areas in which the license laws and the Code of Ethics are different. Of course, the license law always trumps the Code of Ethics if there are instances where the two sets of rules differ.

The following are some examples of the similarities and differences between the license laws and the Code of Ethics:

#### **SIMILARITIES:**

KRS 324.160(4)(e) and Article 5 – all licensees and Realtors® must disclose their status as principals in a real estate transaction.

201 KAR 11:121 and Article 6 – all licensees and Realtors® must disclose the receipt of any monies or fees from vendors.

KRS 324.111 and Article 8 – all licensees and Realtors® must have a separate account in which to place client monies.

KRS 324.160(4)(r) and Article 9 – all licensees and Realtors® must provide copies of all relevant documents to clients.

201 KAR 11:105 and Standard of Practice 12-4 – all licensees and Realtors® must have authority to advertise a seller's property for sale.

KRS 324.160(5) and Article 10 – all licensees and Realtors® must refrain from discrimination or Fair Housing violations.

#### **DIFFERENCES:**

Standard of Practice 1-12 – only Realtors® are required to disclose to the seller the amount of the commission they intend to share with cooperating brokers.

Standard of Practice 1-15 and 3-6— only Realtors® are required to disclose the existence of accepted offers to other Realtors®.

Standard of Practice 3-4 – only Realtors® are required to disclose variable rate commissions.

KRS 324.117 and Standard of Practice 12-6 – only Realtors® are required to disclose their status as an owner and a Realtor® in advertising their own unlisted properties for sale or lease.

201 KAR 11:105 and Standard of Practice 12-7 – license law requires a written listing agreement and consent of the owner in order for a licensee to advertise a piece of property for sale or as sold. The Code allows a cooperating buyer's agent to place a "sold" sign on the property prior to closing with only the consent of the listing broker.

KRS 324.160(4)(p) and Standard of Practice 16-2 and 16-4 – license law prohibits licensees from contacting a seller who has an outstanding exclusive agency agreement with another licensee for the purpose of negotiating about the property or seeking the listing. The Code of Ethics allows such contact in certain instances.

KRS 324.160(4)(f) and Standard of Practice 16-15 – license law mandates that agents receive payment only from their principal brokers. The Code of Ethics allows for payments from other Realtors® to an agent with the consent of the principal broker.

**LICENSE LAW IS SILENT ON THESE ISSUES – but these issues are covered in the Code of Ethics and by other state or federal laws:**

Article 11 – the Code of Ethics requires a Realtor® to be well-versed in his or her area of expertise. The license law is silent on this issue.

Article 13 – the Code of Ethics prohibits the unlicensed practice of law. License law is silent on this issue, but the Kentucky Bar Association rules cover the unlicensed practice of law in this state.

Article 15 – the Code of Ethics prohibits Realtors® from denigrating or disparaging their competitors. The license law is silent on this issue, but it is covered by state and federal antitrust laws.

Standard of Practice 2-4 – the Code of Ethics prohibits Realtors® from stating a false consideration on a deed. The license law is silent on this issue, but it is covered by state law. Stating a false consideration on a deed is a Class D Felony in this state.

Realtor® to Realtor® issues are not dealt with in the license law. The Code of Ethics calls for these issues to be dealt with through arbitration.